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August 18, 2023

Hon. Nelson S. Roman
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Re: Shaul Levy v. Law Offices of J. Henry Nierman, et al.
Docket No. 17-cv-04022

Dear Judge Roman:

This letter is written in compliance with the August 10, 2023, Order from Magistrate McCarthy, which directed the defendants to contact the court to seek permission to file a Motion to Dismiss for Lack of Standing.

The parties never squarely addressed the issue of standing under Article III of the U.S. Constitution despite the age of this case. Indeed, the issue did not emerge until the U.S. Supreme Court's decision of *TransUnion v. Ramirez*, 141 S. Ct. 2190 (2021).

Briefing on the competing Motions for Summary Judgement was completed on April 30, 2021, about two months before the *TransUnion* case was decided by the U.S. Supreme Court and the Opinion & Order of this Court was issued on December 8, 2022, well after the U.S. Supreme Court issued its ruling. The parties never attempted to bring the standing issue to the Court's attention before the Opinion was handed down.

The undersigned was not retained until sometime after this Court's Opinion and noticed fairly quickly that the issue had never been briefed.

The referral to Magistrate McCarthy was on the issue of emotional distress damages and did not include the issues regarding standing. Plaintiff's apparent lack of any concrete injury was never the focus of this case until the undersigned was retained.

As the Court is aware, Article III Standing is a jurisdictional defense that cannot be waived and can be asserted at any stage of the litigation. *See Carter v. Healthport Tech, LLC*, 822 F.3d 47, 56 (2d Cir. 2016).

Defendants would like the opportunity to move forward with their anticipated Motion to Dismiss.



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We await the Court's direction.

Sincerely,

BARRON & NEWBURGER, P.C.

A handwritten signature in black ink, appearing to read "Arthur Sanders".

By: Arthur Sanders

as/bmm